THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 18810 OF 2006

Dated 19th April, 2007

Between:

J.Haritha D/o J.Papa Rao.

… Petitioner

And

The Principal Secretary to Government,
Health, Medical and Family Welfare Department,
Secretariat Buildings, Hyderabad –28 and
others.

…Respondents.

ORAL ORDER:

In this writ petition, the petitioner, a student of M.B.B.S. second year in the third respondent-college seeks a declaration by way of mandamus that the action of the third respondent-college in collecting the referred fees from the petitioner at Rs.15000/- per subject is illegal, ultra vires and in contravention of the rules framed in G.O.Ms.No. 488, dated 5.9.2003.

Admissions to the medical institutions were earlier governed by the statutory rules framed in G.O.Ms.No.488, Health, Medical and Family Welfare (E1) Department, dated 5.9.2003 titled as the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983. It is stated that the said rules are superseded during the academic year 2004-05 by the rules framed in G.O.Ms.No.184, dated 30.6.2004. As per the rules of admission, there are three categories of admissions. It is the case of the petitioner that she was admitted into the M.B.B.S. course in Category-C (management seats), which is fixed at 25% of the total intake of the seats during the academic year 2003-04 and she had passed all the subjects of the first year. She was promoted to second year M.B.B.S. and she appeared for second year M.B.B.S. examinations in four subjects, namely, Microbiology, Pharmacology, Pathology and Forensic Medicine in the month of April, 2006. But, however, she did not get the qualifying marks and was declared failed in the subjects of Microbiology and Pharmacology. To appear for the said examinations, when there was demand for payment of Rs.15,000/- per subject from the college towards the referred fees, this writ petition is filed.

Counter-affidavit is filed by the third respondent, wherein, while generally denying the allegations of the petitioner, it is stated that as per the procedure, the petitioner was to apply for writing examinations through the Dean of the College, but, however, she submitted her application directly in the University and as such, it was returned to the college. It is also stated that during the academic year 2003-04, no specific fees was suggested by the Government and it was left open to the managements to fix reasonable fees with regard to category-C seats.

Heard Shri Jakkamsetti Ravindra, learned counsel for the petitioner, Shri D.V.Nagarjuna Babu, learned Standing counsel for Dr.N.T.R. University of Health Sciences and Shri Ch.Dhanamjaya, learned counsel appearing for the third respondent.

It is submitted by Shri Ravindra, learned counsel for the petitioner that the petitioner was admitted into the course during the academic year 2003-04, during which point of time, the rules of admission framed in G.O.Ms.No. 488 dated 5.9.2003 were in force and in the said rules, there was no provision permitting the management of the institution to collect any amount on account of referred fees, and, therefore, the demand by the respondent-college for payment of RS.15,000/- per subject is illegal and arbitrary.

On the other hand, it is submitted by the learned counsel appearing for the respondent-University as well as third respondent that the said fee is collected only from the failed candidates inasmuch as they incur expenditure in allowing the failed candidates to study in the failed subjects and also conducting internal as well as external examinations. It is stated that though no fee was suggested by the Government during the year 2003-04, but, at the same time, the fee which is collected at the rate of Rs.15,000/- per subject from the failed candidates cannot be termed as illegal and arbitrary. It is further submitted that even the Government has

issued orders in G.O.Ms.No.241 dated 7.8.2004 accepting the recommendations of the Committee constituted for fixation of the fee structure for the students admitted into professional courses and prescribing an amount of Rs.15,000/- for each phase of study for the failed candidates and in that view of the matter, the said payment itself cannot be said to be illegal and arbitrary.

During the academic year 2003-04, when the petitioner was admitted into the course, rules of admission as framed in G.O.Ms.No.488, Health, Medical and Family Welfare (E1) Department, dated 5-9-2003 were in force. The said rules are comprehensive rules governing admission into professional courses in the unaided non-minority professional institutions in the State. Rule 9 of the said Rules deals with the fees structure in respect of private unaided non-minority medical colleges and with reference to Category-C seats, under Rule 9(i)©, no specific fees was suggested and it was left open to the managements of the institutions concerned to fix reasonable fee. Thereafter, on 7.8.2004, the Government issued G.O.Ms.No.241 accepting the recommendations of the Committee constituted for fixation of the fee structure for students admitted into professional courses and fixed the fee payable in non-minority colleges. In the annexure to the said G.O., there is a specific mention with regard to fee to be collected from the failed students, which is fixed at Rs.15,000/- in each phase of study. Though the petitioner was admitted into the course during the year 2003-04, but, however, she appeared for the second year M.B.B.S. examinations in the subjects of Microbiology, Pharmacology, Pathology and Forensic Medicine in the month of April, 2006. In the said examinations, the petitioner had failed in two subjects, namely, Microbiology and Pharmacology. The referred fee which is being charged at Rs.15000/- per subject is on account of expenditure to be incurred to allow the petitioner for

study, internal assessment examinations and final examinations in the subjects. For conduct of examinations, either internal or external, definitely, the management of the institution has to incur further expenditure for such process. Though it is submitted by the learned counsel for the petitioner that such a fee is not contemplated in the rules of admission which were in force in G.O.Ms.No.488, dated 5.9.2003, but, it is to be noted that the fee payable either on account of tuition fee or any other fee was not at all fixed during that academic year in respect of Category –C seats (management seats) and it was left open to the managements themselves to fix reasonable fee. However, the Government itself has fixed the amount of Rs.15,000/- towards the referred fee in G.O.Ms.No. 241, dated 7.8.2004 for failed candidates in non-minority and minority medical colleges. Therefore, in absence of fixation of any fee in the rules which were in force during the year in which the petitioner had taken admission, it cannot be said that the demand of Rs.15,000/- per subject towards the referred fee is illegal, arbitrary or unreasonable.

In that view of the matter, I do not find any illegality in collecting the referred fee from the failed candidates as demanded by the third respondent.

The other submission of the learned counsel for the third respondent that the application for examinations itself was not submitted to the competent authority and as such it was returned and that the petitioner did not fulfill the criterion of minimum attendance percentage to write the examinations need not be gone into as the same is not subject matter of challenge in this writ petition.

For the reasons aforementioned, I do not find any merit in this writ petition for grant of relief as prayed for. The writ petition is dismissed. No costs.

19-4-2007

R.SUBHASH REDDY, J.

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